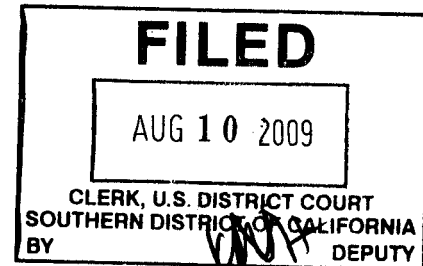


1 Michael S. Agruss (SBN: 259567)  
2 Krohn & Moss, Ltd.  
3 10474 Santa Monica Blvd., Suite 401  
4 Los Angeles, CA 90025  
5 Tel: 323-988-2400  
6 Fax: 866-583-3695  
7 magruss@consumerlawcenter.com

8 Attorneys for Plaintiff,  
9 KENNETH DAVIS



10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 KENNETH DAVIS,

13 Plaintiff,

14 vs.

15 FAIRWAY COLLECTIONS, LLC,

16 Defendant.

17 Case No.:

18 VERIFIED COMPLAINT AND DEMAND  
19 FOR JURY TRIAL

20 (Unlawful Debt Collection Practices)

21 VERIFIED COMPLAINT

22 KENNETH DAVIS ("Plaintiff"), by his attorneys, KROHN & MOSS, LTD., alleges the  
23 following against FAIRWAY COLLECTIONS, LLC, ("Defendant"):

24 INTRODUCTION

- 25 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. ("FDCPA").
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. ("RFDCPA").

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 *U.S.C. 1367* grants this court  
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal  
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

6 6. Declaratory relief is available pursuant to 28 *U.S.C. 2201 and 2202*.

7 **PARTIES**

8 7. Plaintiff is a natural person residing in Oceanside, San Diego County, California.

9 8. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to  
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*  
11 and *Cal. Civ. Code § 1788.2(h)*.

12 9. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)* and *Cal. Civ.*  
13 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

14 10. Defendant is a national company with its headquarters in Centralia, Washington.

15 11. Defendant acted through its agents, employees, officers, members, directors, heirs,  
16 successors, assigns, principals, trustees, sureties, subrogees, representatives, and  
17 insurers.

18 **FACTUAL ALLEGATIONS**

19 12. Defendant constantly and continuously placed collection calls to Plaintiff seeking and  
20 demanding payment for an alleged debt relating to a loan Plaintiff took out for an  
21 automobile.

22 13. Defendant placed calls from a 360-623-1553 telephone number and a 360-330-5887  
23 telephone number.

24 14. Defendant placed calls to plaintiff as early as 7:33 a.m. (See Exhibit A).

25 15. Defendant threatened to take legal action against Plaintiff.

1 16. Defendant threatened to garnish Plaintiff's wages.

2 17. Defendant did not send a debt validation letter to Plaintiff within five (5) days of  
3 Defendant's initial communication with Plaintiff.

4 **COUNT I**  
5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6 18. Defendant violated the FDCPA based on the following:

- 7 a. Defendant violated §1692c(a)(1) of the FDCPA by calling the Plaintiff at an  
8 unreasonable time.
- 9 b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring  
10 repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- 11 c. Defendant violated §1692e(4) of the FDCPA by representing that nonpayment of  
12 Plaintiff's alleged debt will result in garnishment of his wages even though  
13 Defendant has not and does not intend to do so.
- 14 d. Defendant violated §1692e(5) of the FDCPA by threatening to take legal action  
15 against Plaintiff even though Defendant has not and does not intend to take such  
16 action.
- 17 e. Defendant violated §1692e(10) of the FDCPA by false statements and/or  
18 deceptive means in an attempt to collect a debt.
- 19 f. Defendant violated §1692g(a)(1-5) by failing to provide appropriate notice of the  
20 debt within 5 days after the initial communication including: (1) the amount of  
21 the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement  
22 that unless the consumer, within 30 days after receipt of the notice, disputes the  
23 validity of the debt, or any portion thereof, the debt will be assumed to be valid  
24 by the debt collector; (4) a statement that if the consumer notifies the debt  
25 collector in writing within the 30-day period that the debt, or any portion thereof,  
is disputed, the debt collector will obtain verification of the debt or a copy of a

1 judgment against the consumer and a copy of such verification or judgment will  
2 be mailed to the consumer by the debt collector; and (5) a statement that, upon  
3 the consumer's written request within the 30-day period, the debt collector will  
4 provide the consumer with the name and address of the original creditor, if  
5 different from the current creditor.

6 19. As a direct and proximate result of one or more or all of the statutory violations above  
7 Plaintiff has suffered emotional distress (see Exhibit B).

8 WHEREFORE, Plaintiff, KENNETH DAVIS, respectfully requests judgment be entered  
9 against Defendant, FAIRWAY COLLECTIONS, LLC, for the following:

10 20. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection  
11 Practices Act,

12 21. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

13 22. Actual damages,

14 23. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,  
15 *15 U.S.C. 1692k*

16 24. Any other relief that this Honorable Court deems appropriate.

17 **COUNT II**  
18 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**  
19 **PRACTICES ACT**

20 25. Plaintiff repeats and re-alleges all of the allegations in Count I of Plaintiff's Complaint  
21 as the allegations in Count II of Plaintiff's Complaint.

22 26. Defendant violated the RFDCPA based on the following:

23 a. Defendant violated §1788.10(e) of the RFDCPA by threatening that nonpayment  
24 of Plaintiff's alleged debt will result in garnishment of her wages even though  
25 Defendant has not and does not intend to do so.

b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone

1 to ring repeatedly and continuously so as to annoy Plaintiff.

2 c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to  
3 Plaintiff with such frequency that was unreasonable and constituted harassment.

4 d. Defendant violated the §1788.13(j) of the RFDCPA by falsely representing that  
5 legal proceedings have been or are about to be instituted unless Plaintiff pays her  
6 alleged consumer debt.

7 e. Defendant violated the §1788.17 of the RFDCPA by continuously failing to  
8 comply with the statutory regulations contained within the FDCPA, 15 U.S.C. §  
9 1692 et seq.

10 27. As a direct and proximate result of one or more or all of the statutory violations above  
11 Plaintiff has suffered emotional distress (see Exhibit B).

12 WHEREFORE, Plaintiff, KENNETH DAVIS, respectfully requests judgment be entered  
13 against Defendant, FAIRWAY COLLECTIONS, LLC, for the following:

14 28. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt  
15 Collection Practices Act,

16 29. Statutory damages pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal.*  
17 *Civ. Code §1788.30(b)*,

18 30. Actual damages,

19 31. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection  
20 Practices Act, *Cal. Civ Code § 1788.30(c)*, and

21 32. Any other relief that this Honorable Court deems appropriate.  
22  
23  
24  
25

**DEMAND FOR JURY TRIAL**


PLEASE TAKE NOTICE that Plaintiff, KENNETH DAVIS, demands a jury trial in this case.

DATED: August 6, 2009

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: \_\_\_\_\_

  
Michael S. Agruss  
Attorney for Plaintiff

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF CALIFORNIA

Plaintiff, KENNETH DAVIS, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, KENNETH DAVIS, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 20090725

  
KENNETH DAVIS

**EXHIBIT A**



[REDACTED]

## Voice, continued

[illegible]

**EXHIBIT B**

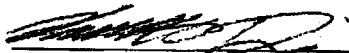
I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- |   |                                      |                          |
|---|--------------------------------------|--------------------------|
| 1. Sleeplessness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone                            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 5. Embarrassment when speaking with family or friends         | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 6. Depressions (sad, anxious, or "empty" moods)               | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 7. Chest pains  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 8. Feelings of hopelessness, pessimism                        | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 9. Feelings of guilt, worthlessness, helplessness             | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 11. Thoughts of death, suicide or suicide attempts            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 12. Restlessness or irritability                              | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 15. Negative impact on my relationships                       | <input checked="" type="radio"/> YES | <input type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: \_\_\_\_\_

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 20090725

  
Signed Name

KENNETH DAVIS  
Printed Name

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Kenneth Dav

## DEFENDANTS

Fairway Collections, LLC

(b) County of Residence of First Listed Plaintiff San Diego (CA)

County of Residence of First Listed Defendant Lewis (WA)

(EXCEPT IN U.S. PLAINTIFF CASES)

(ON U.S. PLAINTIFF CASES ONLY)

'09 CV 1738 WQH

RBB

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd., 10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025; 323-988-2400CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                |                                |   |                                |                                |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2     | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3     | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
		<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692, et seq.

Brief description of cause:

lawful and Abusive Debt Collection Practices

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/06/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

4070

AMOUNT

350.

APPLYING IFP

JUDGE

MAG. JUDGE

8/10/09

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS004070  
Cashier ID: sramirez  
Transaction Date: 08/10/2009  
Payer Name: KROHN AND MOSS LTD

---

CIVIL FILING FEE  
For: DAVIS V. FAIRWAY COLLECTIONS  
Case/Party: D-CAS-3-09-CV-001738-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 17278  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.